

**IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO**

**BUCKEYE FIREARMS  
FOUNDATION, INC.,**

**Plaintiffs,**

**v.**

**CITY OF CLEVELAND, et al.,**

**Defendants.**

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**Case No. CV 09-685734**

**Judge Brian Corrigan**

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**MOTION TO INTERVENE OF  
OHIO ATTORNEY GENERAL RICHARD CORDRAY**

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Pursuant to Civ. R. 24(A) and (B), Ohio Attorney General Richard Cordray hereby moves to intervene in this case to defend the constitutionality of R.C. 9.481. Attached is a Memorandum in Support and Proposed Answer and Counterclaim, as required by Civ. R. 24(C).

Respectfully submitted,

RICHARD CORDRAY  
Ohio Attorney General



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*Attorneys for Proposed Intervenor  
Ohio Attorney General Richard Cordray*

## MEMORANDUM IN SUPPORT

### I. INTRODUCTION

On February 24, 2009, Plaintiffs Buckeye Firearms Foundation, Inc., James Irvine, and Gilbert Croteau (“Plaintiffs”) sued the City of Cleveland (“City”), various city officials, and the Cleveland Metroparks for declaratory and injunctive relief prohibiting the enforcement of various City ordinances regulating the ownership, possession, and storage of firearms on the grounds that the ordinances conflict with R.C. 9.68. Plaintiffs also gave Notice of their Complaint to Ohio Attorney General Richard Cordray pursuant to R.C. 2721.12(A).

In response to Plaintiffs’ Complaint, the City of Cleveland filed an Answer alleging that R.C. 9.68 is unconstitutional. See Answer of City of Cleveland, ¶¶ 12, 15. The City further argues that R.C. 9.68 is not a general law of the State of Ohio and therefore is an unconstitutional attempt by the General Assembly to preempt local ordinances in violation of the Home Rule Amendment of the Ohio Constitution. *Id.* at ¶¶ 23, 27, 31 and pp. 16-17. Because of the City’s attack on the constitutionality of R.C. 9.68, the Attorney General hereby moves to intervene to defend this state law.

### II. LAW AND ARGUMENT

#### A. **Ohio Attorney General Richard Cordray is entitled to intervene as of right pursuant to Ohio Civ. R. 24(A).**

Pursuant to Ohio Civ. R. 24(A), Ohio Attorney General is entitled to intervene in this action based on his interest in defending the constitutionality of R.C. 9.68. Civ. R. 24(A) states that upon timely application, anyone shall be permitted to intervene in an action: (1) when a state statute confers an unconditional right to intervene; or (2) when the person seeking to intervene claims an interest relating to the action and is so situated that the disposition of the action may

impair that person's ability to protect that interest, unless existing parties adequately represent the applicant's interest.

The Declaratory Judgment Act, R.C. 2721.12, confers upon the Ohio Attorney General a right to be heard in this case. The statute provides that in a declaratory judgment action, if any statute or ordinance is alleged to be unconstitutional, the "attorney general shall be served with a copy of the proceedings and *shall be heard.*" R.C. 2721.12 (emphasis added). The Ohio Supreme Court has held that the "very apparent intent" of R.C. 2721.12 is to ensure that the Attorney General is informed of attacks on the constitutionality of state laws such that the Attorney General has early notice to intervene in the action. *Ohioans For Fair Representation v. Taft* (1993), 67 Ohio St.3d 180, 184.

At this early stage of the proceedings, the Attorney General's motion to intervene is also timely. Defendants have recently filed their responsive pleadings and their motions to stay pending resolution of a related case before the Eighth District Court of Appeals. The parties have not initiated any discovery, nor filed any dispositive motions. Therefore, no prejudice would result to any of the parties if the Attorney General were to intervene now. See *State ex rel. First New Shiloh Baptist Church v. Meagher* (1998), 82 Ohio St. 3d 501, 503; *Visconsi Royalton, Ltd. v. City of Strongsville, Ohio* (8th Dist.), 2008-Ohio-4862, ¶ 13 (denying as untimely a motion to intervene filed two years after the parties settled).

Accordingly, the Court should grant the Attorney General's motion to intervene as of right.

**B. Ohio Attorney General Richard Cordray should be permitted to intervene to ensure adequate representation of the State's interests.**

In the alternative, the Attorney General should also be permitted to intervene under Civ. R. 24(B) because of the Attorney General's statutory duties pursuant to R.C. 109.02 to represent


the interests of the State of Ohio. The Ohio Attorney General is the chief law officer for the State of Ohio and all its departments, including the Ohio General Assembly. R.C. 109.02. As such, the Attorney General has the statutory duty to protect the State's interests and to ensure that the City's challenge of R.C. 9.68 is properly adjudicated in accordance with the Ohio Supreme Court's home rule jurisprudence.

### III. CONCLUSION

For these reasons, Ohio Attorney General Richard Cordray asks the Court to grant his motion to intervene.

Respectfully submitted,

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Ohio Attorney General

  
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*Attorneys for Proposed Intervenor  
Ohio Attorney General Richard Cordray*

**CERTIFICATE OF SERVICE**


I hereby certify that the foregoing *Motion to Intervene of Ohio Attorney General Richard Cordray* was sent on May 29, 2009, by regular U.S. mail to the following counsel:

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Pearl M. Chin  
Assistant Attorney General

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<b>BUCKEYE FIREARMS</b>	:	
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	:	<b>Judge Brian Corrigan</b>
<b>CITY OF CLEVELAND, et al.,</b>	:	
	:	
<b>Defendants.</b>	:	

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**ANSWER OF PROPOSED INTERVENOR  
OHIO ATTORNEY GENERAL RICHARD CORDRAY**

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Now comes Proposed Intervenor Ohio Attorney General Richard Cordray, and for his Answer in response to Plaintiffs' Complaint states as follows:

**FIRST DEFENSE**

1. Denies the allegations set forth in paragraphs 1 to 11, inclusive, of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.
2. Admits the allegations in paragraph 12 of the Complaint.
3. In response to the allegations in paragraph 13 of the Complaint, admits that Defendant City of Cleveland filed suit against the State of Ohio in Cuyahoga County Common Pleas Court, Case No. CV 07-618492, seeking a declaration that R.C. 9.68 is unconstitutional. Attorney General Cordray further states that the common pleas court cited the Ohio Supreme Court decision in *Ohioans for Concealed Carry, Inc. v. Clyde*, 120 Ohio St. 3d 96 and granted summary judgment in favor of the State of Ohio and upheld the constitutionality of R.C. 9.68.

Attorney General Cordray also admits that Defendant City of Cleveland filed amicus briefs in the *Clyde* case.

Attorney General Cordray further states that he is counsel of record in *City of Cleveland v. State of Ohio*, currently on appeal before the 8th District Court of Appeals, Case No. 09-092663.

4. In response to the allegations in paragraph 14 of the Complaint, states that the amicus brief of the City of Cleveland in the *Clyde* case speaks for itself.

5. Denies the allegations set forth in paragraphs 15 and 16 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

6. Admits the allegations in paragraph 17 of the Complaint.

#### **Count 1 – Declaratory Judgment**

7. In response to the allegations in paragraph 18 of the Complaint, Attorney General Cordray restates and incorporates herein his responses to paragraphs 1 to 17, inclusive.

8. States that the allegations in paragraph 19 of the Complaint are legal conclusions that do not require a response.

9. Denies the allegations in paragraph 20 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

10. Admits the allegations in paragraph 21 of the Complaint.

11. In response to the allegations in paragraph 22 of the Complaint, states that Cleveland Codified Ordinances 674.02 and 674.99 speak for themselves.

12. In response to the first sentence of paragraph 23 of the Complaint, admits that the relevant portion of R.C. 9.68(A) states that, "Except as specifically provided by the United States

Constitution, Ohio Constitution, state law, or federal law, a person, without further license, permission, restriction, delay, or process, may own, possess, purchase, sell, transfer, transport, store, or keep any firearm, part of a firearm, its components, and its ammunition.” With respect to the remaining allegations in paragraph 23, Attorney General Cordray states that provisions of state and federal law speak for themselves.

13. States that the allegations in paragraph 24 of the Complaint are legal conclusions not requiring a response.

14. Admits the allegations in paragraph 25 of the Complaint.

15. In response to the allegations in paragraph 26 of the Complaint, states that Cleveland Codified Ordinances 674.03 and 674.99 speak for themselves.

16. In response to the allegations in paragraph 27 of the Complaint, states that the statutes and case law cited therein speak for themselves.

17. States that the allegations in paragraph 28 of the Complaint are legal conclusions not requiring a response.

18. Admits the allegations in paragraph 29 of the Complaint.

19. In response to the allegations in paragraph 30 of the Complaint, states that Cleveland Codified Ordinances 674.04 and 674.99 speak for themselves.

20. In response to the allegations in paragraph 31 of the Complaint, states that provisions of state and federal law speak for themselves.

21. States that the allegations in paragraph 32 of the Complaint are legal conclusions not requiring a response.

22. Admits the allegations in paragraph 33 of the Complaint.



23. In response to the allegations in paragraph 34 of the Complaint, states that Cleveland Codified Ordinances 674.05 and 674.99 speak for themselves.

24. In response to the allegations in paragraph 35 of the Complaint, states that provisions of state and federal law speak for themselves.

25. States that the allegations in paragraph 36 of the Complaint are legal conclusions not requiring a response.

26. Admits the allegations in paragraph 37 of the Complaint.

27. In response to the allegations in paragraph 38 of the Complaint, states that Cleveland Codified Ordinances 674.07 and 674.99 speak for themselves.

28. In response to the allegations in paragraph 39 of the Complaint, states that provisions of state and federal law and Cleveland Codified Ordinance 674.07 speak for themselves.

29. States that the allegations in paragraph 40 of the Complaint are legal conclusions not requiring a response.

30. Admits the allegations in paragraph 41 of the Complaint.

31. In response to the allegations in paragraph 42 of the Complaint, states that Cleveland Codified Ordinances 674.09 and 674.99 speak for themselves.

32. In response to the allegations in paragraph 43 of the Complaint, states that provisions of state and federal law speak for themselves.

33. States that the allegations in paragraph 44 of the Complaint are legal conclusions not requiring a response.

34. Admits the allegations in paragraph 45 of the Complaint.

35. In response to the allegations in paragraph 46 of the Complaint, states that Cleveland Codified Ordinances 674.10 and 674.99 speak for themselves.

36. In response to the allegations in paragraph 47 of the Complaint, states that provisions of state and federal law speak for themselves.

37. States that the allegations in paragraph 48 of the Complaint are legal conclusions not requiring a response.

38. Admits the allegations in paragraph 49 of the Complaint.

39. In response to the allegations in paragraph 50 of the Complaint, states that Cleveland Codified Ordinances 627A.02, 627A.03, and 627A.99 speak for themselves.

40. In response to the allegations in paragraph 51 of the Complaint, states that provisions of state and federal law speak for themselves.

41. States that the allegations in paragraph 52 of the Complaint are legal conclusions not requiring a response.

42. Admits the allegations in paragraph 53 of the Complaint.

43. In response to the allegations in paragraph 54 of the Complaint, states that Cleveland Codified Ordinances 628.03 and 628.99 speak for themselves.

44. In response to the allegations in paragraph 55 of the Complaint, states that provisions of state and federal law speak for themselves.

45. States that the allegations in paragraph 56 of the Complaint are legal conclusions not requiring a response.

46. Admits the allegations in paragraph 57 of the Complaint.

47. In response to the allegations in paragraph 58 of the Complaint, states that Cleveland Codified Ordinance 628.04 speaks for itself.

48. In response to the allegations in paragraph 59 of the Complaint, states that provisions of state and federal law speak for themselves.

49. States that the allegations in paragraph 60 of the Complaint are legal conclusions not requiring a response.

50. Admits the allegations in paragraph 61 of the Complaint.

51. In response to the allegations in paragraph 62 of the Complaint, states that Cleveland Codified Ordinance 627.02 and R.C. 2923.12 speak for themselves.

52. In response to the allegations in paragraph 63 of the Complaint, states that provisions of state and federal law speak for themselves.

53. States that the allegations in paragraph 64 of the Complaint are legal conclusions not requiring a response.

54. Admits the allegations in paragraph 65 of the Complaint.

55. In response to the allegations in paragraph 66 of the Complaint, states that Cleveland Codified Ordinances 627.02 and 627.04 and R.C. 2923.16 speak for themselves.

56. In response to the allegations in paragraph 67 of the Complaint, states that provisions of state and federal law speak for themselves.

57. States that the allegations in paragraph 68 of the Complaint are legal conclusions not requiring a response.

58. Admits the allegations in paragraph 69 of the Complaint.

59. In response to the allegations in paragraph 70 of the Complaint, states that Cleveland Codified Ordinances 627.06 and 627.02 speak for themselves.

60. Admits the allegations in paragraph 71 of the Complaint.

61. In response to the allegations in paragraph 72 of the Complaint, states that Cleveland Codified Ordinances 627.07 and 627.08 speak for themselves.

62. In response to the allegations in paragraph 73 of the Complaint, states that R.C. 9.68 and R.C. 2923.21(A)(3) speak for themselves.

63. States that the allegations in paragraph 74 of the Complaint are legal conclusions not requiring a response.

64. Admits the allegations in paragraph 75 of the Complaint.

65. In response to the allegations in paragraph 76 of the Complaint, states that Cleveland Codified Ordinance 627.09 speaks for itself.

66. In response to the allegations in paragraph 77 of the Complaint, states that provisions of state and federal law speak for themselves.

67. States that the allegations in paragraph 78 of the Complaint are legal conclusions not requiring a response.

68. Admits the allegations in paragraph 79 of the Complaint.

69. In response to the allegations in paragraph 80 of the Complaint, states that Cleveland Codified Ordinance 627.10 speaks for itself.

70. In response to the allegations in paragraph 81 of the Complaint, states that provisions of state and federal law speak for themselves.

71. States that the allegations in paragraph 82 of the Complaint are legal conclusions not requiring a response.

72. Admits the allegations in paragraph 83 of the Complaint.

73. In response to the allegations in paragraph 84 of the Complaint, states that Cleveland Codified Ordinance 627.11 speaks for itself.

74. In response to the allegations in paragraph 85 of the Complaint, states that the statutes and case law cited therein speak for themselves.

75. States that the allegations in paragraph 86 of the Complaint are legal conclusions not requiring a response.

76. Admits the allegations in paragraph 87 of the Complaint.

77. In response to the allegations in paragraph 88 of the Complaint, states that Cleveland Codified Ordinance 627.16 speaks for itself.

78. In response to the allegations in paragraph 89 of the Complaint, states that provisions of state and federal law speak for themselves.

79. States that the allegations in paragraph 90 of the Complaint are legal conclusions not requiring a response.

80. Admits the allegations in paragraph 91 of the Complaint.

81. In response to the allegations in paragraph 92 of the Complaint, states that Cleveland Codified Ordinances 549.01, 549.99, and 501.99 speak for themselves.

82. In response to the allegations in paragraph 93 of the Complaint, states that provisions of state and federal law speak for themselves.

83. States that the allegations in paragraph 94 of the Complaint are legal conclusions not requiring a response.

84. States that paragraph 95 of the Complaint sets forth legal conclusions and a demand for relief and contains no factual allegations that require a response. Attorney General Cordray further states that R.C. 9.68 is a valid general law of the State of Ohio.

## **Count II - Injunction**

85. In response to the allegations in paragraph 96 of the Complaint, Attorney General Cordray restates and incorporates herein his responses to paragraphs 1 to 95, inclusive.

86. States that paragraph 97 of the Complaint sets forth legal conclusions and contains no factual allegations that require a response.

87. Denies the allegations in paragraph 98 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

88. Denies the allegations in paragraph 99 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

89. In response to paragraph 100 of the Complaint, states that R.C. 9.68 is a valid general law of the State of Ohio. Attorney General Cordray further states that the remaining allegations in paragraph 100 are legal conclusions not requiring a response.

90. Denies the allegations in paragraph 101 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

91. In response to paragraph 102 of the Complaint, states that R.C. 9.68 is a valid general law of the State of Ohio. Attorney General Cordray further states that the remaining allegations in paragraph 100 are legal conclusions not requiring a response, and that the cases cited therein speak for themselves.

92. States that paragraph 103 of the Complaint sets forth legal conclusions and contains no factual allegations that require a response.

93. States that paragraph 104 of the Complaint sets forth legal conclusions and contains no factual allegations that require a response.

94. States that paragraph 105 of the Complaint sets forth legal conclusions and contains no factual allegations that require a response.

95. States that paragraph 106 of the Complaint sets forth legal conclusions and a demand for relief and contains no factual allegations that require a response.

96. States that paragraph 107 of the Complaint sets forth a demand for relief and contains no factual allegations that require a response.

### **Count III – Mandatory Attorney Fees**

97. In response to the allegations in paragraph 108 of the Complaint, Attorney General Cordray restates and incorporates herein his responses to paragraphs 1 to 107, inclusive.

98. In response to the allegations in paragraph 109 of the Complaint, states that R.C. 9.68(B) speaks for itself.

99. States that paragraph 110 of the Complaint sets forth a demand for relief and contains no factual allegations that require a response.

100. Attorney General Cordray denies each allegation of the Complaint not otherwise expressly admitted.

### **SECOND DEFENSE**

101. R.C. 9.68 is constitutional in all respects

### **THIRD DEFENSE**

102. R.C. 9.68 is a valid general law of the State of Ohio.

### **FOURTH DEFENSE**

103. R.C. 9.68 does not violate Article XVIII, Section 3 of the Ohio Constitution.

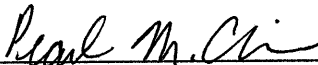
**FIFTH DEFENSE**

104. Attorney General Cordray respectfully reserves the right to amend his Answer to add such affirmative defenses as may be disclosed during the course of this proceeding.

WHEREFORE, Proposed Intervenor Ohio Attorney General Richard Cordray respectfully requests this Court to uphold the constitutionality of R.C. 9.68 and to declare R.C. 9.68 a valid general law of the State of Ohio.

Respectfully submitted,

RICHARD CORDRAY  
Ohio Attorney General

  
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*Attorneys for Proposed Intervenor  
Ohio Attorney General Richard Cordray*



**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing *Answer of Proposed Intervenor Ohio Attorney General*

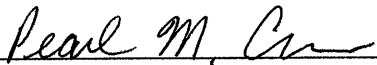
*Richard Cordray* was sent on May 29, 2009, by regular U.S. mail to the following counsel:

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